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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/589,223	06/06/2000	Patrick H. Dwyer	QVA 1844.08A	9434

7590 02/11/2003

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EXAMINER

MAHONEY, CHRISTOPHER E

ART UNIT

PAPER NUMBER

2851

DATE MAILED: 02/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/589,223

Applicant(s)

Dwyer et al.

Examiner
Christopher Mahoney

Art Unit
2851



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Nov 12, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 is/are allowed.
- 6) ☒ Claim(s) 2-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 11
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 2-5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Waller (U.S. Pat. No. 2,583,030). Waller teaches a method of controlling the convergence of two cameras comprising providing two gears 82 each mounted on a separate shaft and synchronized to the movement of the other. A gear provided on a separate shaft 80 is provided to simultaneously drive the two gears as well as means 79 to rotate the gear driver. The applicant is directed to review figures 6 and 8-11 as well as column 3, line 67 to column 4, line 6 and lines 56-58. It is the examiner's position that the claim is anticipated by Waller. However in order to expedite prosecution, the following is presented. The method steps as recited are obvious in view of the apparatus as disclosed. Therefore it would have been obvious at the time the invention was made for one of ordinary skill in the art to provide the steps of providing the gears as disclosed above for the purpose of producing the end product camera system disclosed in Waller.

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Allowable Subject Matter

3. Claim 1 is allowed.

Response to Arguments

4. Applicant's arguments filed November 12, 2002 have been fully considered but they are not persuasive.

The applicant has argued that the present invention is different from Waller because Waller is directed towards correcting parallax while the present invention is for three dimensional imaging. In response to applicant's argument that the claimed invention is for controlling convergence instead of parallax, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

It is further noted that none of the rejected claims actually recite 3D imaging and only one of the rejected claims recites controlling convergence. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., 3D imaging, controlling convergence (except claim 2) and same

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field of view) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claims 4 and 5 recite adjusting the image point or the center to center distance between cameras. Waller is capable of adjusting the center to center distance between cameras. Claim 3 recites aligning the image focal place of two cameras. Aligning focal planes could mean aligning them side by side, aligning them with slight overlap (as in Waller), or aligning them to the same image.

Regarding claim 2 which does recite controlling convergence, Waller also teaches this. Col. 4, line 5 clearly discusses the cross over point. While the invention in Waller clearly does not involve complete cross over, there is some convergence desired and taught.

The applicant argues that Waller is designed for three cameras, not two. It is noted that the Waller discloses the invention as claimed. The fact that it discloses additional structure is irrelevant.

The applicant argues that Waller gear system is not designed to be moved continuously during the photographing operation. Such a feature is not found in the claims.

The applicant argues that the Waller does not contain the unique mechanical features taught by the applicant. The applicant is respectfully requested to *point out the specific mechanical features* claimed by the applicant which are not taught by Waller.

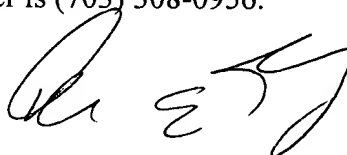
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Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Christopher Mahoney at telephone number (703) 305-3475. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Russ Adams, can be reached at (703) 308-2847. The fax number for this Group is (703) 305-34[31,32]. Any inquiry of a general nature or related to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.



CM
February 10, 2003

Christ pher E. Mah ney
Primary Examiner AU2851